

HOUSE No.

1299

The Commonwealth of Massachusetts

PRESENTED BY:

Antonio F.D. Cabral

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General
Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the
accompanying bill:

An Act to protect children against sex offenders.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Antonio F.D. Cabral	13th Bristol
Stephen L. DiNatale	3rd Worcester
Robert M. Koczera	11th Bristol
John F. Quinn	9th Bristol
James Dwyer	30th Middlesex
Cheryl A. Coakley-Rivera	10th Hampden

Mark C. Montigny
Stephen R. Canessa

Second Bristol and Plymouth
12th Bristol

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO PROTECT CHILDREN AGAINST SEX OFFENDERS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. Section 13B of chapter 265 of the general laws, as appearing in the 2006 official edition, is hereby amended by adding the following:

For the first offense, the convicted will be subject to probation for a term of no less than five years upon release or parole from jail or house of correction, and for the second or subsequent offense be subject to probation for a term of no less than ten years upon release or parole from jail or house of correction; provided, however, that a prosecution commenced under the provisions of this section shall not be placed on file or continued without a finding.

Section 2. Section 13H of chapter 265 of the general laws, as appearing in the 2006 official edition, is hereby amended by adding the following:

10 For the first offense, the convicted will be subject to probation for a term of no less than five
11 years upon release or parole from jail or house of correction, and for the second or subsequent offense be
12 subject to probation for a term of no less than ten years upon release or parole from jail or house of
13 correction; provided, however, that a prosecution commenced under the provisions of this section shall
14 not be placed on file or continued without a finding.

15 **Section 3.** Section 22 of chapter 265 of the general laws, as appearing in the 2006 official
16 edition, is hereby amended by adding the following:

17 For the first offense, the convicted will be subject to probation for a term of no less than five
18 years upon release or parole from jail or house of correction, and for the second or subsequent offense be
19 subject to probation for a term of no less than ten years upon release or parole from jail or house of
20 correction; provided, however, that a prosecution commenced under the provisions of this section shall
21 not be placed on file or continued without a finding.

22 **Section 4.** Section 22A of chapter 265 of the general laws, as appearing in the 2006
23 official edition, is hereby amended by adding the following:

24 For the first offense, the convicted will be subject to probation for a term of no less than five
25 years upon release or parole from jail or house of correction, and for the second or subsequent offense be
26 subject to probation for a term of no less than ten years upon release or parole from jail or house of
27 correction; provided, however, that a prosecution commenced under the provisions of this section shall
28 not be placed on file or continued without a finding.

29 **Section 5.** Section 23 of chapter 265 of the general laws, as appearing in the 2006 official
30 edition, is hereby amended by adding the following:

31 For the first offense, the convicted will be subject to probation for a term of no less than five
32 years upon release or parole from jail or house of correction, and for the second or subsequent offense be
33 subject to probation for a term of no less than ten years upon release or parole from jail or house of

correction; provided, however, that a prosecution commenced under the provisions of this section shall not be placed on file or continued without a finding.

Section 6. Section 24 of chapter 265 of the general laws, as appearing in the 2006 official edition, is hereby amended by adding the following:

For the first offense, the convicted will be subject to probation for a term of no less than five years upon release or parole from jail or house of correction, and for the second or subsequent offense be subject to probation for a term of no less than ten years upon release or parole from jail or house of correction; provided, however, that a prosecution commenced under the provisions of this section shall not be placed on file or continued without a finding.

Section 7. Section 24B of chapter 265 of the general laws, as appearing in the 2006 official edition, is hereby amended by adding the following:

For the first offense, the convicted will be subject to probation for a term of no less than five years upon release or parole from jail or house of correction, and for the second or subsequent offense be subject to probation for a term of no less than ten years upon release or parole from jail or house of correction; provided, however, that a prosecution commenced under the provisions of this section shall not be placed on file or continued without a finding.

Section 8. Section 27 of chapter 265 of the general laws, as appearing in the 2006 official edition, is hereby amended by adding the following:

For the first offense, the convicted will be subject to probation for a term of no less than five years upon release or parole from jail or house of correction, and for the second or subsequent offense be subject to probation for a term of no less than ten years upon release or parole from jail or house of correction; provided, however, that a prosecution commenced under the provisions of this section shall not be placed on file or continued without a finding.

Section 9. Section 4A of chapter 272 of the general laws, as appearing in the 2006 official edition, is hereby amended by adding the following:

59 For the first offense, the convicted will be subject to probation for a term of no less than five
60 years upon release or parole from jail or house of correction, and for the second or subsequent offense be
61 subject to probation for a term of no less than ten years upon release or parole from jail or house of
62 correction; provided, however, that a prosecution commenced under the provisions of this section shall
63 not be placed on file or continued without a finding.

64 **Section 10.** Section 35A of chapter 272 of the general laws, as appearing in the 2006 official
65 edition, is hereby amended by adding the following:

66 For the first offense, the convicted will be subject to probation for a term of no less than five
67 years upon release or parole from jail or house of correction, and for the second or subsequent offense be
68 subject to probation for a term of no less than ten years upon release or parole from jail or house of
69 correction; provided, however, that a prosecution commenced under the provisions of this section shall
70 not be placed on file or continued without a finding.

71 **Section 11.** Section 47 of chapter 265 of the general laws, as appearing in the 2006 official
72 edition, is hereby amended by replacing the second sentence with the following:

73 The commissioner of probation, in addition to any other conditions, shall establish defined
74 geographic inclusion zones and exclusion zones to minimize the probationer's contact with children. The
75 defined exclusion zones shall include, but not be limited to, playgrounds, libraries, schools, day care
76 centers, the parking area and land surrounding any of the aforementioned facilities, and any other locale
77 deemed worthy by a probation officer to minimize the probationer's contact with children.

78 **Section 12.** Section 178L of chapter 6 of the general laws, as appearing in the 2006 official
79 edition, is hereby amended by replacing section 1(a) with the following:

80 Section 178L of chapter 6 of the general laws, as appearing in the 2006 official edition, is hereby
81 amended by replacing section 1(a) with the following:

82 Not less than 180 days prior to the release or parole of a sex offender from custody or
83 incarceration, the board shall notify the sex offender of his right to submit to the board documentary
84 evidence relative to his risk of reoffense and the degree of dangerousness posed to the public and his duty

to register according to the provisions of section 178E. If the sex offender is a juvenile at the time of such notification, notification shall also be mailed to the sex offender's legal guardian and his most recent attorney of record. Such sex offender may submit such evidence to the board within 30 days of receiving such notice from the board. Upon a reasonable showing, the board may extend the time in which such sex offender may submit such documentary evidence by no more than 30 days. The board may extend the time which such sex offender may submit such documentary evidence after the 30 days, but only after additional reasonable showing and not more than 30 days at a time. Upon reviewing such evidence, the board shall notify the sex offender within 30 days of the board's recommended sex offender classification, his duty to register, if any, his right to petition the board to request an evidentiary hearing to challenge such classification and duty, his right to retain counsel to represent him at such hearing and his right to have counsel appointed for him if he is found to be indigent as determined by the board using the standards under chapter 211D; provided, however, that such indigent offender may also apply for and the board may grant payment of fees for an expert witness in any case where the board in its classification proceeding intends to rely on the testimony or report of an expert witness prepared specifically for the purposes of the classification proceeding. If the offender is found to be indigent as determined by the board using the standards under chapter 211D, counsel shall be appointed within 20 days. Such sex offender shall petition the board for such hearing within 20 days of receiving such notice. The board shall conduct such hearing within 60 days from the latter of petition from the sex offender or appointment of counsel. The failure timely to petition the board for such hearing shall result in a waiver of such right and the registration requirements, if any, and the board's recommended classification shall become final.

Section 13. Section 178L of chapter 6 of the general laws, as appearing in the 2006 official edition, is hereby amended by replacing section 1(c) with the following:

In the case of any sex offender not in custody, upon receiving registration data from the agency, the police department at which the sex offender registered, the sentencing court or by any other means, the board shall promptly notify the sex offender of his right to submit to the board documentary evidence relative to his risk of reoffense and the degree of dangerousness posed to the public and his duty to

111 register, if any, according to the provisions of section 178E. If such sex offender is a juvenile at the time
112 of such notification, notification shall also be mailed to the sex offender's legal guardian and his most
113 recent attorney of record. Such sex offender may submit such evidence to the board within 30 days of
114 receiving such notice from the board. Upon a reasonable showing, the board may extend the time in
115 which such sex offender may submit such documentary evidence by no more than 30 days. The board
116 may extend the time which such sex offender may submit such documentary evidence after the 30 days,
117 but only after additional reasonable showing and not more than 30 days at a time. Upon reviewing such
118 evidence, the board shall notify the sex offender within 30 days of the board's recommended sex offender
119 classification, his duty to register, if any, his right to petition the board to request an evidentiary hearing
120 to challenge such classification and duty, his right to retain counsel to represent him at such hearing and
121 his right to have counsel appointed for him if he is found to be indigent as determined by the board using
122 the standards under chapter 211D; provided, however, that such indigent offender may also apply for and
123 the board may grant payment of fees for an expert witness in any case where the board in its classification
124 proceeding intends to rely on the testimony or report of an expert witness prepared specifically for the
125 purposes of the classification proceeding. If the offender is found to be indigent as determined by the
126 board using the standards under chapter 211D, counsel shall be appointed within 20 days. Such sex
127 offender shall petition the board for such hearing within 20 days of receiving such notice. The board shall
128 conduct such hearing within 60 days from the latter of petition from the sex offender or appointment of
129 counsel. The failure timely to petition the board for such hearing shall result in a waiver of such right and
130 the registration requirements, if any, and the board's recommended classification shall become final.